



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,397	12/21/2001	Matthew A. Hayduk	42390P12402	1097

8791 7590 07/19/2005

BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER
----------

COFFY, EMMANUEL

ART UNIT	PAPER NUMBER
----------	--------------

2157

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,397

Applicant(s)

HAYDUK, MATTHEW A.

Examiner

Emmanuel Coffy

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/14/2003
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the application filed on December 21, 2001. Claims 1-19 are pending. Claims 1-19 are directed to a device, method and article for a "Portable Computing Device Having a Dynamic Client Classmark & Method Therefor."

#### **Specification**

2. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In this case the language: "Briefly, in accordance with one embodiment of the invention" is objected to. Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitation of claim 4, 7 and 8.

#### ***Drawings***

4. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled

"Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

5. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "how to dynamically generate a client classmark as the computing device is moved, how the device is adapted to communicate using a first and second communication service, tracking the load status of the processor, how the client classmark is generated based on the load status of the processor, how the memory is adapted to store the client classmark, and determining what communication services are available" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and

Art Unit: 2157

where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Claim Objections**

6. Claim 13 is objected to because of the following minor informalities. Claim 12, is a dependent, which claim dependency on 6 and claim 14 is an independent claim. A claim that depends from a dependent claim should not be separated by any claim that does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general applicant's sequence will not be changed. See MPEP §608.01(n). Appropriate correction is required.

7. Claim 15 is objected to because as written it depends on itself. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A reasonable artisan skilled in the art could not comprehend the claims as written. Claim 7 recites: "... includes maintaining a client classmark for the device based upon the physical capabilities of the device" The physical capabilities are undefined within the claim language. It is not clear what the boundary of the claim is. Hence, the scope of the claim is unascertainable.

However, in order to expedite a more complete examination the Examiner asserts that this invention is understood as: "hardware capacity."

10. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A reasonable artisan skilled in the art could not comprehend the claims as written. Claim 8 recites: "... includes maintaining a client classmark for the device based upon the logical capabilities of the device" The logical capabilities are undefined within the claim language. It is not clear what the boundary of the claim is. Hence, the scope of the claim is unascertainable.

However, in order to expedite a more complete examination the Examiner asserts that this invention is understood as: "on-board software."

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-2, 5-6 and 11 directed to a device, method and article are rejected under 35 USC 102(e) as being anticipated by Roel-Ng et al. (US 6,002,936).

Roel teaches a telecommunications system and method for allowing a cellular network to determine the optimum positioning method, having knowledge of all available network-based and terminal-based positioning methods. (See abstract)

Claim 1:

A mobile computing device comprising:

a processor; and (See Fig. 3 index (300) inherently includes a processor)

a memory, wherein the mobile computing device is adapted to dynamically generate a client classmark as the mobile computing device is moved. (See Fig. 3 indices (300, 310) device 300 inherently includes memory – See also col. 4, line 60-col. 5, line 14)

Claim 2:

The mobile computing device of claim 1, wherein the mobile computing device is further adapted to communicate using at a first and second communication service, the client

Art Unit: 2157

classmark being generated depending, at least in part, on availability of the first and second communication service. (See Fig. 1 (10, 12, 18, 25), col. 4, line 41-59.)

Claim 5:

The mobile computing device of claim 1, wherein the memory is adapted to store the client classmark. (See Fig. 3 index (310), col. 5, lines 1-14). It is inherent that the client classmark is stored in memory.)

Claim 6:

A method comprising:

determining what communication services are available to a device; and  
maintaining a client classmark for the device based upon what communication services are available. (See Fig. 1 index (10, 12, 18, 25), col. 5, lines 1-14).)

Claim 11

The method of claim 6, further comprising:  
adjusting the execution of an application on a processor in the device depending on the client classmark. (See col. 4, line 60-col. 5, line 14.)

13. Claims 14 directed to an article is rejected under 35 USC 102(e) as being anticipated by Koehne (EP 0 980 190 A1.)

Claim 14:

An article comprising a storage medium having stored thereon instructions, that, when executed by a computing platform, results in:

polling to determine what communication services are available to the article;

and



dynamically generating a client classmark for the article based upon what communication services are available. (See paragraphs 0043-0057)

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 3, 4, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Rawson III (US 6,480,966.)

Claim 3:

The mobile computing device of claim 1, further comprising a monitor adapted to track a load status of the processor.

Roel-Ng does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters permit processor performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 4:

The mobile computing device of claim 3, wherein the client classmark is generated, at least in part, on the load status of the processor.

Roel-Ng teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters would permit processor's performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 7:

The method of claim 6, further comprising:

polling to determine the hardware capacity of the device, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon the hardware capacity of the device. (The performance monitor indicates the hardware capacity of the device.)

Roel-Ng teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters permit processor performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 10

The method of claim 6, further comprising:

determining a current load of a processor in the device, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon the current load of the processor.

Roel-Ng teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters would permit processor's performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Art Unit: 2157

16. Claims 8, 9, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roel-Ng et al. (US 6,002,936) in view of Koehne, Leif EP 0 980 190 A1.)

Claim 8:

The method of claim 6, further comprising:

polling to determine logical capabilities of the device, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon on-board software of the device.

Roel-Ng teaches client classmark but does not specifically teach software capabilities. However, Koehne explicitly teaches available modes of operation at paragraph 0043. (the modes of operation supported are directly related to on-board software.)

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the available modes of operation as taught by Koehne because on-board software determines the modes of operation by limiting the services that can be accessed.

Claim 9:

The method of claim 6, further comprising:

defining user preferences, wherein maintaining the client classmark includes maintaining a client classmark for the device based upon the user preferences.

Roel-Ng teaches client classmark but does not specifically teach user preferences. However, Koehne explicitly teaches user preferences at paragraphs 0043 and 0056.

Art Unit: 2157

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the user preferences as taught by Koehne because user preferences would be used to provide a specific service.

Claim 12:

The method of claim 6, further comprising:

requesting with a first application executing on a processor in the device that a second application executing on the processor modify its operational characteristics.

This claim is objected to because it depends upon a rejected claim.

Claim 13:

The method of claim 1, further comprising storing the client classmark in a memory of the device.

Roel-Ng inherently teaches storing the client classmark in memory, it is not explicit. However, Koehne explicitly teaches storing the client classmark in memory at paragraphs 0041. (modes of operation)

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with selecting the modes of operation as taught by Koehne because it would enhance QoS by providing the client with requested service.

Art Unit: 2157

17. Claims 15- 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koehne (EP 0 980 190 A1 in view of Rawson III 6,480,966.)

Claim 15:

The article of claim 14, wherein the instructions, when executed, further result:

polling to determine physical capabilities of the article, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the hardware capacity of the device.

Koehne teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status from which hardware capacity can be inferred. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Koehne with the performance monitor as taught by Rawson because performance counters permit processor performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 16:

The article of claim 15, wherein the instructions, when executed, further result:

polling to determine logical capabilities of the article, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the logical capabilities of the device. (See paragraph 0043-0057.) (the modes of operation supported are directly related to on-board software.)

Art Unit: 2157

Claim 17:

The article of claim 15, wherein the instructions, when executed, further result: defining user preferences, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the user preferences. (See paragraph 0043 and 0056.)

Claim 18:

The article of claim 15, wherein the instructions, when executed, further result: determining a current load of a processor in the article, wherein dynamically generating the client classmark includes generating a client classmark for the article based upon the current load of the processor.

Koehne teaches client classmark but does not specifically teach a monitor to track the processor's load or performance status. However, Rawson explicitly teaches this limitation throughout specifically at col. 4, lines 25-30.

Hence, it would have been obvious at the time of the invention for an artisan of ordinary skill in the art to combine the use of mobile device taught by Roel-Ng with the performance monitor as taught by Rawson because performance counters would permit processor's performance parameters to be monitored and measured where the information obtained from these counters can then be used for tuning system performance.

Claim 19:

The article of claim 15, wherein the instructions, when executed, further result:

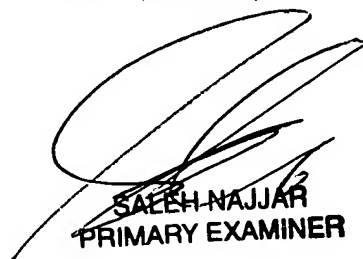
Art Unit: 2157

adjusting the execution of an application on a processor in the article depending the client classmark. (See paragraph 0043-0057)

### CONCLUSION

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Coffy whose telephone number is (571) 272-3997. The examiner can normally be reached on 8:30 - 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-3997. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SALEH NAJJAR**  
**PRIMARY EXAMINER**

Emmanuel Coffy  
Patent Examiner  
Art Unit 2157

\*\*\*

EC  
June 22, 2005